



Talbot County Planning Commission
Final Decision Summary

Wednesday, February 5, 2020 at 9:00 a.m.

Bradley Meeting Room

11 N. Washington Street, Easton, Maryland

Attendance:

Commission Members:

Phillip “Chip” Councell, Chairman
William Boicourt, Vice Chairman
Paul Spies
Michael Strannahan
Lisa Ghezzi

Staff:

Mary Kay Verdery, Planning Officer
Anthony Kupersmith, County Attorney
Mary O’Donnell, Assistant County Attorney
Maria Brophy, Planner II
Elisa Deflaux, Planner II

1. Call to Order—Commissioner Spies called the meeting to order at 9:00 a.m.

2. Election of Officers—The Commission voted for Chairman and Vice Chairman. The results were unanimous and the following were appointed:

Phillip “Chip” Councell, Chairman of the Planning Commission
William Boicourt, Vice Chairman of the Planning Commission

3. Decision Summary Review— January 2, 2020 —The Commission noted the following corrections to the draft decision summary:

- a. Line 9; Correction Paul Spies “Chairman”.
- b. Line 78; Correct to “necessary for our farmers”
- c. Line 94; Change impossible to “it would be very difficult”
- d. Line 103; Remove words “the road” and add “which already”
- e. Line 131; Remove “Lose in the pile would be dramatic”.
- f. Line 145-148; Remove all verbiage.
- g. Line 153; Change verbiage to “with all conditions mentioned by staff”

Commissioner Spies moved to approve the January 02, 2020 Decision Summary, with amendments. Commissioner Boicourt seconded the motion. The motion carried unanimously.

4. Old Business—None

5. New Business

Applicant: Walter Frey III Trustee
File No.: W-20-001
Agent: Brett Ewing, Lane Engineering
Request: Waiver Request- Expanded Buffer Reduction
Location: High Banks Drive, Easton, MD 21601
Zoning: Map 27, Grid 18, Parcel 50; Lot 22, Zone: RR

Elisa Deflaux stated that applicant is seeking approval of a waiver of the buffer expansion consistent with § 190-15.11.11B.5.c. The property is located at 9250 High Bank Terrace. Staff finds the site conditions support a waiver. Staff has made a site visit and found the building pad area of the lot to have little relief. The east side that faces the Choptank River is a sheer vertical face (88% to 91% slope), where the west and north side is extremely steep sloped (over 50%) to a tidal wetland that wraps around the lot on these two sides. The lot is accessed by an earthen dam/causeway. The neighboring lot with similar site conditions has a residence within 50 feet of the Choptank River slope. This proposal sets the house further from the the neighboring residence.

Staff Comments

- 1) Staff notes the Planning Commission has the ability to grant the waiver for relief of the strict interpretation of the steep slope criteria. Staff supports this request as the area designated in red on the site plan represents an area of the lot with no relief.
- 2) This project will need to address buffer establishment based on the “total lot coverage” at the time of building permit. Although the parcel is vegetated heavily with large trees, there may be areas of the shoreline development buffer that can be vegetated with native herbaceous material that will further stabilize the slopes and eliminate impacts to the slopes by decreasing regular lawn maintenance in the buffer.
- 3) To develop the parcel, tree clearing will be required; however, the limit is 30% of the forest area. A percentage higher than 30% will require a variance from the Board of Appeals.

Should the Commission recommend approval, Staff recommends:

- 1) Stormwater management should be address in conjunction with the required buffer management plan to provide the best design for the stabilization of the slopes on the site.

Brett Ewing represented Mr. Frey in regards to requesting relief from the Planning Commission. He stated that they would work with staff regarding proper stormwater management to help with erosion.

Commissioner Ghezzi expressed concern regarding erosion and damage to trees in this area. Commissioner Spies stated he was in support of this waiver. They are going to put a house on the lot; this waiver request gives builders the ability to work with staff to build in a better place. Commissioner Strannahan agreed. Elisa Deflaux agreed that the waiver creates a better building pad.

Commissioner Spies moved to approve the Waiver Request- Expanded Buffer Reduction for Walter Frey III Trustee, located at 9250 High Banks Drive, Easton, MD 21601, with the condition that the applicant work with staff on the recommended staff condition and notes mentioned during this meeting. Commissioner Strannahan seconded the motion. The motion carried (4-1).

6. New Business

Applicant: Town of Trappe & Trappe East Holdings Business Trust

Agent: Ryan Showalter

Request: Consideration of consistency with the Talbot County Comprehensive Plan

Project: Resolution 281 proposes to amend the Talbot County Comprehensive Water and Sewer Plan to reclassify and remap portions of certain real property located in the town of Trappe, Maryland associated with the Lakeside Planned Unit Development (The "Lakeside Project") (formerly known as "Trappe East"), further described as Tax Map 54, Parcel 304; Tax Map 55, Parcels 14, 15, 17, 19, 44, 65, 83, and 85; and, Tax Map 59, Parcel 4.

Ray Clarke gave some details regarding the proposal to reclassify and remap the property from the current classification of "S-W, W-2" to "S-1, W-1, immediate priority status. This was shown on a worksheet titled, "Talbot County Comprehensive Water & Sewer Plan, Town of Trappe, Proposed Water Service Area & Water Facilities". The area was originally identified as S-W and W-2 in 2002, which is a future planning area of 3-5 years. This correlates with the proposed Water Treatment plant. The proposed plant will be an Enhanced Nutrient Removal (ENR) 0.54 MGD Membrane Bio-Reactor wastewater treatment plant (WTP) and the collection system will be designed, constructed and operated in phases to serve the proposed Lakeside development within the Trappe East Sewer District. After initial construction, each phase of the WWTP will be sized to treat approximately 100,000 gallons of wastewater per day. Additional phases will be added to the WWTP as the capacity of the current phase approaches 80%. The plant will have a 60-day storage pond. After the phases the total flow will be 540,000 gallons per day. Mr. Clarke also confirmed for Commissioner Boicourt that the Maryland Department of Environment (MDE, State Agency) will be responsible for regulating the plant. The MDE has trained and licensed people that know what they are looking for. Someone with a classified license will run the plant. He also stated that a log containing the discharge numbers are maintained at the plant and reported to MDE. MDE considers 8 milligrams per liter (mg/l) total nitrogen at discharge to be net zero. The system they are currently proposing uses Enhanced Nutrient Removal (ENR) technologies, which are an advanced level of treatment. The goal of ENR is to achieve effluent nutrient concentrations of approximately 3.0 milligrams per liter (mg/l) total nitrogen and approximately 0.3 mg/l total phosphorus. The effluent will be discharged using a spray irrigation system over approximately 83 acres. A nutrient management plan will be developed at a later time and presented to the Maryland Department of Environment. What is being presented to the Planning Commission today is in order to review and make a recommendation to the County Council that Resolution 281 is consistent with the County's Comprehensive Plan. MDE has put the Water and Sewer plans in our hands but the final approval is from the MDE. If the County Council turns down Resolution 281, the Town can go directly to MDE and request that they approve this Resolution. All communication from MDE so far suggests that they support this area being classified as S-1 and W-1 immediate priority status. In 2002 the parcels were classified as S-2 and W-2, which is 3-5 years and it is now almost 20 years later.

Commissioner Councell asked the applicants to speak. Ryan Showalter, Attorney for the applicants, and Lindsey Ryan representing the Town of Trappe provided comments.

Highlights from Mr. Showalter's comments follow. The original plan in 2002 included Biological Nutrient Removal (BNR) that uses microorganisms to remove nitrogen and phosphorus from wastewater during treatment. BNR contains approximately 8 milligrams per liter (mg/l) of nitrogen at discharge. A change in the plan is to upgrade the technology to an ENR system. The discharge from the ENR system is clean enough that MDE could issue a permit to release directly into the stream. He also spoke about the phased plans. One benefit is that the micro-organisms will have time grow. Modular storage tanks in this plan also create a benefit; if one needs maintenance, there will still be other modular tanks in use. The treatment plant will be subject to review and permit of MDE. The plant will be the third largest in the County run by licensed operators either employed or contracted by the Town of Trappe.

Lindsey Ryan stated that the Town of Trappe is aware that the Town will be ultimately responsible for the operation of the plant. The Town is also aware that additional employees are needed. This is a special taxing area and they are required to have bonds, so the Town is not worried about the financial responsibility at this time. Mr. Showalter added information regarding the project falling under an existing Development Rights and Responsibilities Agreement (DRRA) since 2006. The developer is initially responsible for the construction and operation of this wastewater plant and the Town can accept dedication of the plant at the time of their choosing. If the Town accepts dedication on day one, the developer is still responsible for any plant shortfalls.

Mary Kay Verdery stated the role of the Planning Commission is to certify if the amendment is consistent with the Comprehensive Plan with consistency meaning the action taken will further, and not become contrary to, the items in the Comprehensive Plan. She stated there are seven areas reviewed for consistency when making this recommendation:

- 1 Policies
- 2 Timing of implementation of the Plan
- 3 Timing of development
- 4 Timing of rezoning
- 5 Development patterns
- 6 Land use
- 7 Density for Intensity Element

Commissioner Councell asked if anyone would like to speak in the audience. Mr. Bruce Armistead, Attorney and Dr. Steve Harris came forward. Dr. Harris and his wife own contiguous land to the approved Lakeside Development at the northeast corner. Mr. Harris stated he is not opposed to the development, but is opposed to the impact of the location of the development. He purchased land to preserve it from being developed. Lot 9 is down-stream from the Lakeside Development and entirely owned by Dr. and Mrs. Harris. They are here to protect their property rights. In 2003 Trappe had approximately 635 registered voters and approximately 54% voted. Most voters did vote to approve the Lakeside Project. But, those who voted comprised about 1/3 of the registered voters in the Town. Mr. Harris had no say in the matter.

Mr. Armistead stated he did not hear Ray Clarke give qualified testimony on his faith in the technology. The Harris' are concerned about the impact on ground and surface water. The plan calls for monitoring stations with one on the Harris property; they have not given permission for a station to be placed on their property. Also, if the technology is so good, then why are the monitoring stations necessary? If the monitoring stations detect a problem, the Harris' property will already be affected. If a modular tank breaks, the contents will run directly down-stream. Mr. Armistead pointed out that it's unclear what crops will be planted to absorb the nutrients. The Harris' would propose the developer propose a different wastewater management system or move the location of the spray field. If not, they are requesting a Planning Commission recommendation to the County Council that the reclassification is deferred or declined until all other alternatives have been researched. If that is unable to be done, the Harris' are requesting the Commission recommend that the County Council impose conditions that ensure that there will be no impact on properties such as Dr. and Mrs. Harris. Mr. Armistead also questions if the County is not opening itself and the Town of Trappe up to a future lawsuit.

A discussion took place regarding the discharge levels. Ray Clarke confirmed that the levels are tested at the discharge point. Mr. Armistead also submitted letters to the Planning Commission.

Break -Commissioner Councill called a ten-minute break

Once back in session, Commissioner Councill stated that they would need a person on the board to be a designee for the open meetings act. This person is familiar with opening and closing a session.

Commissioner Strannahan moved to appoint Commission Boicourt as the designee. Commissioner Spies seconded the motion. The motion carried unanimously.

Matt Pluta, Bay Watcher of Shore Rivers, spoke. He submitted a comment letter to MDE and emailed the Planning Commissioners with more details. He noted the Choptank River is already impaired for nutrients; it is the only river in the Chesapeake Bay area that is continuing to degrade in water quality. There are red flags with these discharge permits. There are not many cases where these facilities are not in violation of some kind. Mills creek is a spawning area for many species and anything that flows in will have an impact on the spawning potential. It was stated earlier that MDE considers 8mg per liter a net zero discharge. Through Shore Rivers research of these facilities that is complete legal fiction. Anytime you release wastewater in a non-direct discharge, the fate of those nutrients is undetermined as it's unclear where those nutrients end up. He also believes the 60-day holding tank is not enough, Department of Agriculture requires a longer length of time.

Mr. Pluta questioned the permit level stating 8 milligrams per liter (mg/l) and Commissioner Councill followed by asking if there needs to be discussion regarding the appropriate discharge levels. Ryan Showalter stated that the MDE regulates the level acceptable discharge levels, not the County. The permit was issued by MDE at 8

milligrams per liter (mg/l) total nitrogen at discharge. However, the amendment states that the developers are building an ENR plant with 3.0 milligrams per liter (mg/l) total nitrogen. If approved, the County is developing an ENR plant with 3.0 milligrams per liter (mg/l) total nitrogen.

Commissioners had questions regarding the Total Maximum Daily Load (TMDL). Mr. Clarke responded that the County has a target TMDL load number to reach by 2025. These loads are pounds per year reduction. He stated the County needs to confirm with MDE what number they will calculate on the permit or the discharge number. He believes the County has room at full capacity to meet the required TMDL which is based on wastewater, not septic loads.

Commissioner Councill offered more audience members to speak. William Anderson, Chairman of Public Works Advisory Board, stated he does not find Resolution 281 to be consistent with the Comprehensive Plan for three reasons. First, reclassifying the entire development waives the County from updates on development. He urges only reclassifying Phase 1 of the project, so that the developer and Town will need to come back for each phase. The second reason is the uncertainty of the impacts of the spray irrigation system. The third reason is MDE uses a magic number of zero net discharge, but we do not know the crop proposed.

Resident Paul Spitzer asked that a conserved approach be taken to protect the streams and wildlife that breed in this area.

Resident Patti Dewitt shared her love for the Chesapeake Bay. She kayaks and loves the clear water at Mills Creek. As a homeowner she does not want the water contaminated and worries about the impact on the environment for generations to come. She asked who will pay if the developer goes bankrupt. She noted a letter submitted to the Planning Commission and hopes that they take it in consideration.

Alan Girard, Eastern Shore Director with the Chesapeake Bay Foundation and a Talbot County resident, spoke. He noted the Chesapeake Bay is going in the right direction, but the Choptank River has some issues. He submitted a letter to MDE. There is a total daily coliform load number on the Choptank River along with other pollutants. He also noted there was a procedural mistake made mostly on MDE's part. For MDE to issue a draft permit there must be a Water and Sewer Plan update finding consistency. He asked the Planning Commission to consider inconsistency regarding water quality and adequate capacity of the sewer system; there is too much uncertainty to say it is consistent when there is no nutrient plan submitted.

Commissioner Spies moved to go into closed session to seek legal counsel. Commissioner Ghezzi seconded the motion. Commissioner Boicourt abstained from the vote. The motion carried (4).

Upon reconvening in open session, Commissioner Councill allowed Mr. Showalter and Mr. Armistead to make last statements before the vote. Both men reiterated their points.

Commissioners discussed the importance of this topic and the option of a phased approach. Ryan Showalter noted he did submit Exhibit 1 showing a more phased approach and he suggested a conditional recommendation that Resolution 281 be amended.

Commissioner Spies wanted it noted that if this issue comes back or a motion is made today, he would say that Resolution 281 is compliant with the Comprehensive Plan; it's not based on personal preference but just based on what he is tasked to do. He stated that spray irrigation is mentioned in the comprehensive plan as one of our preferred systems.

Commissioner Boicourt moved to make a recommendation to the County Council to consider a more phased approach to Resolution 281. Commissioner Spies seconded the motion. The motion carried unanimously.

The Planning Commission stated a written recommendation will be sent to the County Council which is scheduled to meet next week.

Commissioner Councill adjourned for a 20-minute lunch break.

7. New Business

Applicant: Willard Workman- Rolles Range Partners

Request: Amendment of Resolution 282

Location: 24500 Rolles Range Rd, Saint Michaels, MD 21633

Zoning: Map 23, Parcel 41; Zone:

The owner/proprietor of the George Brooks Bed and Breakfast would like to amend Resolution 282 to include his property in the S-1 area in the Comprehensive Water and Sewer Plan. Mr. Workman did contact Ray Clarke's office in effort to obtain public sewer service. The current plan S-1 plan runs past his property but did not include it. In fairness, he contacted Ray Clarke shortly after adoption of Resolution 235. The Resolution allowed the County to receive funding to extended sewer in that area but not on his property.

Ray Clarke illustrated on a map the sewer connection points and pump stations in the area. The County is hoping to have sewer run down Rolles Range Road this spring. He explained the type of connection that you get when it is planned versus the type of connection added at a later time. Where there is a property, a curb valve is installed at the property line. Even if a property is vacant or unimproved and the property owner later decides to connect, they can connect to that curb valve. If there is no valve, a saddle-tap will be used to connect, which involves stainless steel bolts. However, over time the bolts will corrode, fail and create a sewer leak. It is preventative to master in those curb valves.

Mr. Workman spoke about the history of his property, which is now in an Historic Overlay Zoning District. He went in front of the Planning Commission in 2002 in order to build two poolside structures for rental use. There have been some changes in the codes and failed bills that affected his project. He admitted to putting the buildings in

327 service prior to receiving permission from the County but immediately ceased once he
328 received an abatement order. He believed Resolution 282 wrongly states that the owner
329 has not sought amendments for use of the accessory structures. There is a provision in the
330 County now that may allow him to obtain an expansion. He met earlier this week with the
331 Planning Officer and Deputy Planning Officer regarding this issue. Although not
332 supported by Environmental health, Mr. Workman stated that his septic system is failing
333 due to environmental changes including heavier storms. He stated that he is willing to
334 pay for connection to the public sewer system after his current system fails.

335
336 Mary Kay Verdery stated that once again the role of the Planning Commission is to
337 certify if the amendment is consistent with Comprehensive Plan. Consistency means the
338 action taken will further and not be contrary to items in the Comprehensive Plan. There
339 are seven areas that need to be reviewed when making this recommendation:

- 340 1 Policies - Applicable Comprehensive Plan Policies and statements are attached in
341 Exhibit A.
- 342 2 Timing of implementation of the Plan - There is no specific implementation timing
343 associated with amendment of sewer status.
- 344 3 Timing of development – The owner is seeking to expand his (6) rental room and Bed
345 and Breakfast use to a 12-room historic inn.
- 346 4 Timing of rezoning - Resolution 282 does not include a request for rezoning.
- 347 5 Development patterns - The subject parcel is larger in size than neighboring
348 residential properties. Should the Commission recommend designation of S-1 status,
349 staff suggests that the boundary be drawn parallel to Rolles Range Road creating a
350 split sewer service area parcel.
- 351 6 Land Use - The property is in the future growth area of Saint Michaels and zoned
352 Countryside Preservation (CP) and Rural Conservation (RC). CP and RC zoning
353 districts are characterized by open space, agriculture, forestry and low-density single-
354 family detached residential uses.
- 355 7 Density for Intensity Element - Resolution 175 is limited to parcels in the Unionville,
356 Tunis Mills and Copperville area. Using this criteria, the Environmental Health office
357 cannot attest that similar conditions exist for the Rolles Range Property.

358
359 Mr. Workman suggested that he supports reclassifying the buildings that are currently
360 connected to his septic system S-1 and connecting to the Sewer System. While there are
361 sewage reserve areas for another septic system, it is difficult to get the property to perc.
362 He noted if the sewer system is going to run past his property, then why not allow him to
363 connect to the sewer line.

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365 **Commissioner Spies moved to go into closed session to seek legal counsel.**

366 **Commissioner Strannahan seconded the motion. The motion carried unanimously.**

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368 Commissioners returned. They discussed more details with the applicant and Mary Kay
369 Verdery and questioned their options. Mary O'Donnell advised the Planning Commission
370 that the application could be withdrawn, their decision could be based on conditions, or their
371 decision could find all or none of the amendment consistent with the Comprehensive Plan.
372 She also stated that the resolution does not expire, so the applicant could ask for a deferment.

373 If a partial resolution is approved, the applicant will need to come back for another resolution
374 to get the other structures attached to the sewer after occupancy is received for those
375 structures. The applicant amended his request to allow the partial approval.
376

377 **Commissioner Boicourt moved to make a recommendation to the County Council**
378 **finding consistency with the Comprehensive Plan due to abundance and the fact that**
379 **the line is under construction. He further moved to recommend Resolution 282 be**
380 **approved as amended with the S-1 coverage eligibility line drawn on the southside of**
381 **swimming pool and parallel to Rolles Range Road. Commissioner Spies seconded the**
382 **motion. The motion carried unanimously.**
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384 **Discussions Item**

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386 **8. Staff Matters**—None.
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388 **9. Work Sessions**
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390 **10. Commission Matters**—None.
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392 **11. Adjournment**— Commissioner adjourned the meeting at 3:42 pm.
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